

**Roadway Express, Inc. and Lehigh Valley Chapter  
Teamsters for a Democratic Union. Case 4-  
CA-11594**

March 1, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On November 4, 1981, Administrative Law Judge George F. McInerney issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Roadway Express, Inc., Allentown, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

<sup>1</sup> Contrary to the statement of the Administrative Law Judge in fn. 2 of his Decision, we agree with Respondent that the record established that Respondent had instituted the use of production cards at its Allentown facility prior to the events in the instant case. However, this misstatement by the Administrative Law Judge in no way affects his finding, with which we agree, that employee Madouse, in posting and distributing materials protesting Respondent's use of production cards at its Tannersville facility, was engaged in protected concerted activity. Employees have no less interest in or concern about a work rule that has been imposed than one that is being considered. In the former case, employees may legitimately protest the use and application of the rule and seek its rescission, and here Madouse's actions were clearly designed to make his fellow Allentown employees aware that such a legitimate protest might be appropriate.

We do not adopt, however, the Administrative Law Judge's speculative and irrelevant comments regarding the effects of the activities of the Teamsters for a Democratic Union on the stability of the bargaining relationship between Respondent and the Teamsters Union.

<sup>2</sup> The Administrative Law Judge inadvertently failed to conform the notice to the Order. Accordingly, we have substituted the attached notice for that of the Administrative Law Judge.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interfere with our employees' exercise of protected concerted activities by removing literature posted on bulletin boards or placed on tables in our dispatch room in Allentown, Pennsylvania.

WE WILL NOT impose a no-solicitation/no-distribution rule which discourages employees from engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL rescind the no-solicitation/no-distribution rule imposed on September 16, 1980.

ROADWAY EXPRESS, INC.

**DECISION**

**STATEMENT OF THE CASE**

GEORGE F. MCINERNEY, Administrative Law Judge: Based on a charge filed on November 13, 1980, by Lehigh Valley Chapter Teamsters for a Democratic Union, the Acting Regional Director for Region 4 of the National Labor Relations Board, herein referred to as the Board, issued a complaint on December 30, 1980, alleging that Roadway Express, Inc., herein referred to as the Company or Respondent, had violated Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.*, herein referred to as the Act, by removing material posted by one of its employees on a bulletin board, and by promulgating an invalid no-solicitation rule. Respondent filed an answer to the complaint denying the commission of any unfair labor practices.

Pursuant to notice contained in said complaint a hearing was held before me in Allentown, Pennsylvania, on August 26, 1981, at which all parties were represented, and were given the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally.<sup>1</sup> After the conclusion of the hearing, the General Counsel and Respondent filed briefs which have been carefully considered.

<sup>1</sup> The General Counsel has moved to amend the transcript of this hearing in certain respects. In the absence of objection, the motion is allowed.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following:

## FINDINGS OF FACT

### I. JURISDICTION

Roadway Express, Inc., is a Delaware corporation engaged in the trucking industry as a common carrier hauling freight in interstate commerce. It maintains a terminal in Allentown, Pennsylvania, which is the location involved here. The complaint alleges, the answer admits, and I find that Roadway Express, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICES

At the opening of the hearing all parties stipulated that a no-solicitation rule promulgated by the Company was overly broad. The rule, which was posted at the Allentown terminal on September 16, 1980, over the signature of Terminal Manager F. R. Tomb stated that "the distribution and/or posting of non-authorized, non-company literature or possession of same on company property is strictly forbidden" and that "[a]ny employee who violates these instructions will be subject to disciplinary action up to and including immediate discharge."

The posting of this notice reflected Respondent's concern over a situation in which some of its employees were interested in an organization known as Lehigh Valley Chapter Teamsters for a Democratic Union (TDU), which is the Charging Party herein. Respondent's employees have been represented for some time by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters), and worked under the terms of the National Master Freight Agreement and the Central Pennsylvania Over-the-Road and Local Cartage Supplemental Agreement. Under article 19, section 2, the Company was required to maintain a bulletin board at each of its terminals for the use of the Teamsters.

At Allentown the Company maintained a bulletin board for the Teamsters, as well as other boards for company use in a small room where drivers reported before and after their assignments. The room contained a windowed partition looking into the office area of the terminal, where drivers received their orders and reported to the dispatcher. In addition to the dispatch window and the bulletin boards, the room contained a table where drivers could sort out paperwork, and an unattended snackbar where employees could buy candy, cookies, and such. The room was also used without opposition from management, as a break room or a lunchroom by employees.

There was some question about the use of the bulletin boards. It was agreed by those who testified that a social organization of Respondent's employees called the Rex Club used the bulletin boards to post its bylaws and to advertise its social activities. On the question of posting of other materials the witnesses for the General Counsel maintained that materials offering articles for sale were posted without hindrance from management, and a

notice for a church program in which employee Gary Heintzelman was interested remained posted for some time. On the other hand, Terminal Manager Ray Tomb stated that he frequently checked the status of the bulletin boards and removed any notices which did not have to do with the Teamsters or the Rex Club. I have some doubt about this, because Tomb admitted his visits to the room where the bulletin boards were located were infrequent, and also because he admitted that materials circulated by TDU in an election campaign the previous year were allowed to remain posted. I find that, while Tomb may have made efforts from time to time to reduce clutter on the bulletin boards, there was no firm practice or policy restricting the use of the boards to the Teamsters or the Rex Club materials.

In the fall of 1980 the TDU was concerned about a new practice instituted by Respondent in some of its terminals. This required employees to fill out "production cards" on work assignments. The cards were then tabulated and used to measure productivity (and, presumably, to increase productivity by forcing employees to work harder).<sup>2</sup> The TDU was upset and concerned over this action by the Company, and even more concerned over what was perceived as lack of effective protest of this action by the Teamsters.

Douglas Madouse, an employee of the Company, was also a member of the Lehigh Valley Chapter of TDU. At a meeting of this organization in September 1980, Madouse picked up a poster containing protests by "Northwestern Pennsylvania TDU" against the Company's actions at its Tannersville facility together with copies of a TDU newspaper entitled "Convoy Dispatch" which also contained articles critical of the Company, particularly the imposition of the production cards. On the morning of September 15, Madouse posted the poster on a bulletin board occupied by safety posters. He testified that he did not cover anything else with this item. He placed copies of the newspaper on the table in the dispatch room, then went out for a few moments. When he returned he found that someone had taken a page from one of the newspapers, a page dealing specifically with Roadway Express and the production cards, and posted it on the bulletin board reserved for the Teamsters and the Rex Club notices. Madouse did not disturb this, but left on his route for the day.

When Madouse returned he noticed that the materials which had been posted that morning, as well as the newspapers, were gone. He asked the dispatcher what had happened and the dispatcher replied that Tomb had removed them.

On the next day Tomb posted the new rule mentioned above, and since that time Madouse has neither distributed nor posted TDU literature.

Since Respondent has admitted that the September 16 notice written and posted by Tomb is unlawfully broad, and a reading of the notice certainly confirms this, I will not discuss that aspect of the complaint, but will turn to the alleged violation of Section 8(a)(1) of the Act based

<sup>2</sup> There is no indication in the record that the Company intended implementing this system at the Allentown terminal.

on Tomb's removal of the TDU literature on September 15.

The Company is concerned about the internal conflict within the Teamsters. This is understandable. The Company negotiates with the Teamsters for a collective-bargaining agreement which, however costly in terms of economics and administration, should assure the Company a certain stability in labor relations during its term. The activities of TDU, as shown by its literature introduced in the record of this case, would tend to interfere with this stable relationship by promoting a greater militancy on the part of the Teamsters.

The Company argues that since Madouse, a single employee, posted the offending notices, he was not engaged in concerted activity. However, Madouse testified that he was a member of the Lehigh Valley Chapter of TDU, and that he had obtained the materials he posted at a TDU meeting. The materials contained matters of interest to Madouse, and his act of posting and leaving the newspapers clearly shows that he wanted others to be aware of the content.<sup>3</sup> I find that Madouse, in posting and distributing these materials, was engaged in concerted activity for the information and edification of his fellow employees as well as himself.

Respondent also argues that the subject matter of the literature "bore no demonstrated relevance to the Respondent's Allentown employees." I disagree. The literature is militant and strident in tone, but it does describe the implementation of new production standards at Respondent's Tannersville, Pennsylvania, facility. Tannersville is approximately 45-50 miles north of Allentown. I think any prudent driver at Allentown could deduce that, if something works out for the Company at Tannersville, it could and would be applied elsewhere, including at Allentown. It thus does not appear to me that the issue is so remote from the legitimate work interests of the Allentown employees as to stand in the category of solicitations from a fraternal lodge.

While, as I have noted, the literature is militant in tone, a careful reading shows that there is no solicitation contained therein which could be viewed as a call for violence, illegal actions, or actions in violation of the contract. Indeed employees are urged to press grievances under the contract to their ultimate disposition. Then, if a deadlock occurred at the National level, the Union, as the contract provides, may take economic action, including, presumably, a strike.

In view of this discussion, I find that Madouse was engaged on September 15 in protected concerted activity. This activity was connected with working conditions at other Roadway terminals, but could be viewed as likely to spread to Allentown. The literature posted was not inflammatory nor would it tend to lead to unlawful actions.

In this connection the record is fairly clear that the Company had, up to September 16, no rule about posting of materials. I credit the testimony of Madouse, Barry Smith, and Heintzelman that other materials were posted on the bulletin boards for varying lengths of time without hindrance.

<sup>3</sup> The fact that the poster may have come from another subdivision of TDU does not put that item in a different category.

I therefore find that by removing the literature from the bulletin boards, and from the dispatch room, Respondent has violated Section 8(a)(1) of the Act.<sup>4</sup> *Transcon Lines*, 235 NLRB 1163 (1978); *Illinois Bell Telephone Company*, 255 NLRB 380 (1981).

It is clear, also, that the no-distribution no-solicitation rule promulgated by Respondent is invalid as overly broad, and is a further violation of Section 8(a)(1) of the Act. *Pedro's Inc., d/b/a Pedro's Restaurant*, 246 NLRB 567 (1979).

### III. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1), I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By removing literature posted on its premises by an employee engaged in protected concerted activity, Respondent has violated Section 8(a)(1) of the Act.

3. By promulgating a no-distribution no-solicitation rule which is overly broad, Respondent has violated Section 8(a)(1) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

### ORDER<sup>5</sup>

The Respondent, Roadway Express, Inc., Allentown, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with the protected concerted activities of its employees by removing literature posted on bulletin boards or placed on tables in its dispatch room in Allentown, Pennsylvania.

(b) Promulgating no-distribution no-solicitation rules in order to discourage employees from engaging in protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Immediately rescind the no-distribution no-solicitation rule promulgated on September 16, 1980.

<sup>4</sup> Respondent's argument that TDU lacks "privity" is really irrelevant since it is not the rights of TDU which are at issue here, but the rights of Respondent's employees.

<sup>5</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Post at its place of business in Allentown, Pennsylvania, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's authorized representative, shall be

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<sup>6</sup> In the event this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to the employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.